IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9491 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ABDULBHAI @ ABDUL RASHID @ RASULBHAI MANSURI

Versus

STATE OF GUJARAT

Appearance:

MR MHM SHAIKH for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 30/11/2000

ORAL JUDGEMENT

#. The petitioner has filed this petition under Article 226 of the Constitution of India challenging his detention under the Gujarat Prevention of Anti-Social Activities ACt 1985 (hereinafter referred to as the PASA

Act). The Police Commissioner, Ahmedabad City, Ahmedabad passed the detention order against the petitioner on 20.6.2000 in exercise of the powers vested in him under section 3(1) of the PASA Act. The petitioner came to be detained on 20.6.2000 in pursuance of the above said order.

#. The grounds of detention as placed on record reveals that the detaining authority took into consideration 6 crimes registered against the petitioner under sections 379 and 114 of the Indian Penal Code at Sherkotda as well as Karanj Police Stations of Ahmedabad City. The facts of the crimes reveals that the petitioner was indulging in theft of auto rickshaw vehicle and was an obstruction to the public order. The detaining authority took into consideration the investigation carried on in the above said 6 crimes. In addition to this, the detaining authority also considered the statements of two witnesses who on assurance of anonymity stated that the petitioner was an hardened criminal and was a dangerous person. The petitioner was indulging in theft activity and due to his fear nobody came forward to give any evidence against him. From the above material, the detaining authority reached to the conclusion that the petitioner was a dangerous person within the meaning of section 2(c) of the PASA Act and an obstruction to public order. The detaining authority also reached to the subjective satisfaction that there was no other alternative except to detain the petitioner to prevent this illegal activity which was causing obstruction to public peace and order.

#. Learned advocate Mr. M.R.Prajapati for the petitioner and Mr. Uday Bhatt learned AGP for the respondents were heard.

#. The detention order impugned has been challenged on many grounds. Rival contentions on scrutiny clearly reveals that the petition is required to be disposed of on one ground alone and that is non application of mind by the detaining authority qua the facts of the case.

#. In Zubedabibi Rasidkhan Pathan vs. State of Gujarat reportred in 1995 (2) GLR 1134, the Division Bench of this Court ruled that the detaining authority was duty bound to consider the last drastic remedy available to them. This court further observed that provision for cancellation of bail under section 437(5) of Cr.P.C. as provided is far more wide in import and intent and which could have been resorted to by the detaining authority.

Non consideration of this less drastic remedy was considered non application of mind on the part of the detaining authority by this court in the said case. This view was again fortified by this Court in the case of Yunusbhai Hasanbhai Ghanchi vs. District Magistrate decided on 15.9.1999 in Letters Patent Appeal No. 2056 of 1999. In this case also in the grounds of detention the detaining authority has observed that in all the 6 crimes registered against the petitioner, he was in custody when the detention order came to be served upon him. However, the detaining authority considered further that in the 6 crimes registered against the petitioner, the petitioner on preferring bail application was likely to be released on bail and that the procedure under section 437(5) of Cr.P.C. was likely to take time and since the illegal activity of the petitioner was required to be prevented forthwith, there was no other alternative except to pass the order of detention under the PASA Act.

#. Non application of mind by the detaining authority is obviously on two aspects. Firstly, the detaining authority failed to consider that since the petitioner was in judicial custody in the crimes registered against him, he was not likely to continue his illegal activities in the society as alleged and therefore, the order of detention was not required. Further the detaining authority has failed to consider the intent and import of the provision under section 437(5) of Cr.P.C. The detaining authority had opportunity to oppose the bail application on the ground that the detenu was likely to continue his illegal activity had he been released on bail. Thereafter also cancellation of bail could have been considered in the proper perspective. In the grounds of detention, the detaining authority has merely observed and anticipated that if the detenu was released on bail he was likely to continue his illegal activity. This reveals total non application of mind by the detaining authority qua the facts of the case. The detention order therefore, is vitiated by non application of mind by the detaining authority and is required to be set aside.

#. In this view of the matter the detention order passed by the Police Commissioner, Ahmedabad City on 20.6.2000 against the petitioner under the PASA act is quashed and set aside. The petitioner-Abdulbhai @ Abdul Rashid Rasulbhai Mansuri is ordered to be set at liberty forthwith, if he is not required to be detained for any other purpose. Rule made absolute.

(J.R.Vora.J)

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